

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Post-Incentive Auction Transition)	MB Docket No. 16-306
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	

**COMMENTS OF
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”)¹ hereby submits its comments on the *Public Notice* issued by the Incentive Auction Task Force and Media Bureau (“Bureau”)² in the above-referenced proceedings.

NCTA’s cable operator members share a strong interest in minimizing disruptions to viewers after the broadcast spectrum auction is complete. Ensuring that cable customers continue to seamlessly enjoy broadcast television signals post-auction will take planning, resources, and significant coordination among cable operators and those broadcast television stations that are being repacked. Shifting certain broadcast channels not *once* but *twice* after the spectrum auction will multiply the potential confusion and costs arising from post-auction

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 80 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$245 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to approximately 30 million customers.

² *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 16-1095 (rel. Sept. 30, 2016) (“*Public Notice*”). The *Public Notice* seeks comment on whether to assign some stations (those in “complex ‘cycles’ of inter-dependency”) to temporary channels during the transition phase of the post-auction process in an effort to “reduc[e] the size or number of linked-station sets” and to “facilitate[e] a [television] station’s ability to operate on its pre-auction channel, while testing on its post-auction channel.” *Id.* ¶ 20-21.

repacking. We therefore agree with the *Public Notice*'s tentative conclusion not to assign television broadcasters temporary channels post-auction.³

DISCUSSION

The *Public Notice* explains that “temporary channel assignments would replicate pre-auction coverage area and population served,”⁴ and Federal Communications Commission (“Commission”) staff suggested in their October 17 webinar that the Commission could assign temporary channels close or adjacent to a station’s post-auction channel in order to reduce installation cost and inconvenience.⁵ However, this provides little assurance that a cable operator could continue to receive the station at its headend in the same way as it could pre-auction.

NCTA previously explained that cable systems often receive a single broadcast television station on a receive antenna either tuned to a *specific* frequency or are able to receive a small range of frequencies within either the UHF or VHF band.⁶ A decision to move broadcasters to temporary channels that “may be located anywhere in the post-auction VHF or UHF television bands, as well as in the new 600 MHz wireless band,”⁷ could mean cable operators could no longer use their existing equipment to receive that station.⁸

³ *Id.* ¶ 20 (“We tentatively conclude that the benefits of using temporary channels are not great enough in light of the potential burdens.”).

⁴ *Id.* ¶ 21.

⁵ Federal Communications Commission, *Transition Scheduling Plan Webinar* (Oct. 17, 2016), <https://www.fcc.gov/news-events/events/2016/10/post-incentive-auction-scheduling-plan-webinar>. *See also* *Public Notice* ¶ 21 (suggesting that the FCC would “limit such assignments to channels that are close to the stations’ ultimate channel assignments”).

⁶ *See* Letter from Diane Burstein, Vice President and Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Sept. 13, 2013).

⁷ *Public Notice* ¶ 21.

⁸ This would be the case, for example, if a pre-auction UHF station were to move to a channel in the VHF band, or could even be true if a “high” UHF channel were moved to a channel in the lower part of the UHF band under some circumstances.

Changes to a broadcast station's assigned frequency, therefore – whether on a temporary or permanent basis – could require a cable operator to purchase a new antenna to continue to receive that particular station. Operators may incur potentially significant labor costs, too.⁹ These include not only expenses related to mounting and pointing the antennas, but also testing to ensure systems can continue to receive a good quality broadcast signal at the headend. If the receive antenna acquired for the *temporary* channel could not receive that station's post-repack *permanent* channel assignment, a cable operator could be forced to incur the same equipment and labor costs, and dedicate the same manpower, yet again. As a result, this type of two-stage process could eat away at the limited relocation fund.¹⁰

Practical and operational challenges aside, the *Public Notice* makes certain unwarranted assumptions about the must carry rights of broadcasters if they were to operate on a temporary channel. Contrary to the *Public Notice's* tentative conclusion,¹¹ extending such rights cannot be squared with the must carry provisions of the Cable Act.

Section 614 of the Cable Act assigns must carry rights to certain “local commercial television stations,” defined as “any full power television broadcast station . . . *licensed* and operating on a *channel regularly assigned to its community by the Commission* that, with respect

⁹ Comments of the National Cable & Telecommunications Association at 20-21, GN Docket No. 12-268 (filed Jan. 25, 2013). *See generally* Comments of the National Cable & Telecommunications Association, GN Docket No. 12-268 (filed Nov. 4, 2013).

¹⁰ Congress has made clear that cable operators are entitled to reimbursement for costs “reasonably incurred” to continue to carry broadcast stations after the spectrum auction, and we agree with the *Public Notice's* tentative conclusion (at ¶ 23) that if temporary channels are authorized, cable operators “would be eligible for reimbursement of all eligible costs in order to continue to carry a reassigned station operating on a temporary channel.” Cable operators must be made whole, whether this post-auction repacking process involves one or two steps.

¹¹ *See Public Notice* ¶ 22 (“if we decide to use temporary channel assignments, we tentatively conclude that stations will have must-carry rights on their temporary channels”).

to a particular cable system, is within the same television market as the cable system.”¹² A broadcaster operating on a temporary channel would satisfy neither criterion.

The *Public Notice* explains that the Bureau has no plan to require broadcasters to “license their temporary channel facilities,”¹³ but rather would issue affected broadcasters special temporary authority (“STA”) to operate on such channels.¹⁴ An STA for operation on a temporary channel, however, is not the same as a “license” to operate on a regularly-assigned channel. For example, the Commission distinguished between STAs and licenses in its June 2014 Incentive Auction *Report & Order*, finding that broadcasters operating pursuant to special temporary authority were not “broadcast television licensees” entitled to protection under Section 6403(b)(2).¹⁵ The Commission reasoned that “STAs and experimental authorizations are, as their names indicate, interim, provisional, and nonpermanent in nature” and that STA operations “are secondary to all other authorized and licensed users, including secondary services such as the LPTV service.”¹⁶ Moreover, a broadcaster operating on a temporary channel

¹² 47 U.S.C. § 534(h)(1)(A) (definition of “local commercial television station”) (emphasis added).

¹³ *Public Notice* ¶ 21.

¹⁴ *Id.*

¹⁵ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6676 ¶ 109 (2014). Section 6403(b)(2) of the Spectrum Act requires the Commission to exercise “all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each *broadcast television licensee*” (emphasis supplied).

¹⁶ *Id.* ¶ 245. See also *EchoStar Corporation: Application for Special Temporary Authority to Operate the EchoStar 15 Satellite on Channels 23 and 24 at the 61.55 [Degrees] W.L. Orbital Location*, Order and Authorization, 25 FCC Rcd 10,980, 10,981 ¶ 3 (2010) (stating that unassigned channels used by EchoStar for over a decade pursuant to STA were “not yet regularly assigned to any licensee”).

would not be licensed to operate on a channel “*regularly assigned* to its community by the Commission,”¹⁷ as a temporary channel would not be listed in any DTV table of allotments.¹⁸

In short, carriage of temporary broadcast channels would not be required by the must-carry provisions of the Cable Act.

CONCLUSION

For the foregoing reasons, the Bureau should not provide broadcasters temporary channels post-auction.

Respectfully submitted,

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¹⁷ The case cited in the *Public Notice* at n.60 – *Complaint of Johnson Broadcasting, Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 3574 (1994) (“*Johnson Broadcasting Inc. Complaint*”) – is distinguishable because there the station received an authorization for operation on the station’s permanent, not temporary, channel (and, in fact, a license was granted to the station before must-carry rights were perfected). *Johnson Broadcasting Complaint* ¶ 13. Here, no formal license from the Commission will issue for a temporary channel.

¹⁸ See 47 C.F.R. § 76.5 (definition of television broadcast station, referring to a channel “regularly assigned to its community” pursuant to the table of allotments in sections 73.606 or 73.622 of Title 47).